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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

IN THE MATTER OF)
)
PETITION FOR RULEMAKING)
OF THE NATIONAL)
ASSOCIATION OF)
ATTORNEYS GENERAL)
PROPOSING ADDITIONAL)
DISCLOSURES BY SOME)
OPERATOR SERVICE)
PROVIDERS)
)
AND)
)
COMPTEL's FILING IN CC)
DOCKET NO. 92-77)
PROPOSING A RATE CEILING)
ON OPERATOR SERVICE)
CALLS)

CC DOCKET NO. RM-8606

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CC DOCKET NO. 92-77

**REPLY COMMENTS OF
THE COLORADO PUBLIC UTILITIES COMMISSION STAFF**

April 25, 1995

I. INTRODUCTION

The Staff of the Colorado Public Utilities Commission ("Colorado PUC Staff") respectfully submits these reply comments before the Federal Communications Commission ("FCC" or "Commission"). Colorado PUC Staff filed its initial comments on or about April 10, 1995 ("original comments"). In light of comments made by other parties¹, we would reiterate our support for the disclosure proposal presented by the National Association of Attorneys General ("Attorneys General") as modified by the proposal by the Colorado PUC staff. This is the only proposal that places an informed consumer into the operator services/public telephone market, thus allowing competition to work the way it is intended. All of the other proposals presented in this comment period and in previous comments relating to Billed Party Preference ("BPP") focus on additional regulatory compliance requirements and exorbitant network costs and, thus, add more complexity and more regulatory cost to the equation. We believe that requirements for specific price disclosure for operator service providers ("OSPs") which are providing service at rates above a market price determined by the Commission will provide the appropriate market signals to consumers such that competition will be enhanced without elaborate price ceiling schemes, complex regulatory oversight, or artificial network investment.

There were several parties who have provided comments expressing the opinion that the

¹ We are in receipt of the following comments: Supplemental Comments of the Competitive Telecommunications Association on Alternatives to Billed Party Preference ("CompTel Comments"), Reply Comments of the Florida Public Service Commission, Comments of Frontier Communications International, Inc., Comments of Capital Network System, Inc. Opposing Proposed Rate Ceiling on Operator Service Calls, Comments of One Call Communications, Inc. d/b/a OPTICOM, Comments of ONCOR Communications, Inc., Comments of U.S. Long Distance, Inc., Comments of the National Association of Attorneys General Telecommunications Subcommittee of the Consumer Protection Committee, AT&T's Comments, Comments of Sprint Corporation, Comments of MCI Telecommunications Corporation, Comments of Gateway Technologies, Inc., Comments of Bell Atlantic, Comments of Teltrust, Inc., Comments of Southwestern Bell Telephone Company, Comments of the United States Telephone Association, Comments of U.S. Osiris Corporation, Comments of Operator Service Company, NYNEX Comments, Comments of Pacific Bell and Nevada Bell, Comments of the National Telephone Cooperative Association, Comments of MessagePhone, Inc., Comments of the American Public Communications Council, Comments of Intellicall Companies, and Ameritech Comments.

proposal by the Attorneys General is well-intentioned or meritorious². Although no party completely supports that proposal as it is, the Colorado PUC staff is convinced that disclosure is the most effective manner of dealing with the problems inherent in the OSP industry.³ In our original comments, we also stated that a system of appropriate rate ceilings, based upon a market basket approach, would only suffice as a less desirable second choice. The rate ceilings proposed by the supporters of the CompTel proposal are too high to be considered as an appropriate benchmark for the entire industry, either as a "hard trigger" for disclosure, for a "hard rate cap" or for a "soft rate cap" as proposed by CompTel. Further, CompTel's rate ceiling is nothing more than a thinly disguised price floor.

II. The Colorado Proposal

As described in our original comments, the Colorado PUC staff recommends that the FCC adopt an oral rate disclosure requirement for all operator service providers who are charging rates above a Commission-determined set of market prices. In summary, this requirement would provide the following advantages:

1. The consumer would be able to have specific price information prior to making a call where charges would exceed the Commission-determined market prices⁴;
2. OSPs which opt to provide services within the Commission-determined market prices would not be required to perform any additional functions;
3. OSPs that have higher costs would be allowed to charge compensatory rates

² Sprint at p. 3, Bell Atlantic at p. 1, Southwestern Bell at pp. i, 3, NYNEX at p. 3. Ameritech's proposal uses a modified form of the Attorneys General proposal.

³ Despite its opposition to the specific disclosure proposal presented by the Attorneys General, the APCC provides comments seemingly in support of disclosure. "OSPs that charge above-benchmark rates should be required to inform consumers when they are about to incur charges which may exceed the benchmark rates." APCC Comments at p. 2. Actual proposal at p. 15. Most consumers likely are unaware of a "benchmark" price. Real-time rate quotes are the only means of providing would-be customers the opportunity to make informed choices.

⁴ See Colorado PUC Staff Comments at ¶ 16.

simply by providing disclosure of those rates⁵;

4. Implementation of Billed Party Preference becomes unnecessary;
5. A system of "rate caps", as proposed by CompTel, is unnecessary;
6. The market forces would focus the consumer on the aggregator, rather than the wholesale providers of services;⁶ and
6. The operator services market would be allowed to function in a more competitive manner.⁷

III. The CompTel Proposal

Besides all of the aforementioned positive reasons for implementation of the price disclosure requirement, there are strong reasons for not implementing the CompTel proposal:

1. The rates proposed in the CompTel Proposal are too high;⁸

⁵ *id* at ¶ 17.

⁶ "The only way to foreclose abuse is to change the incentives, . . . which will encourage OSPs to redirect their competitive efforts toward consumers." MCI Comments at p. 5. We believe that consumer awareness is the solution to the problem. As evidenced in the hotel/motel industry, when consumers are aware that the hotel is responsible for the high charges, they received vast amounts of negative consumer reaction, thus resulting in lower rates. "Over the last two years, downward pressure has been brought to bear on hospitality rates. The pressure has come from hotels/motels whose guests have complained about telephone charges and increased their dial-around usage." U.S. Osiris Comments at p. 6-7.

⁷ "(I)t is better left to a competitive market . . . to force inefficient and high-cost service providers from the marketplace." MCI Comments at p. 4 *fn*5. Also, the contention by the APCC at p. 14 of its comments, that the disclosure message "discourages competition" is counterintuitive. If price disclosure discourages competition, our entire economic system is incorrect.

⁸ See Sprint Comments at pp. iii, 7; MCI Comments at p. 4; Pacific Bell Comments at p. 2; Ameritech Comments, and Colorado PUC Staff Comments at ¶ 18. We agree with Sprint's comments: "If the alternative operator service providers cannot offer service to the public at rates equal to those of the full-service industry, the Commission must question whether their existence serves the public interest." Sprint Comments at p. 11. We disagree with the contention by Capital Network System at p.3 of its comments wherein it is contended that "OSPs are nondominant carriers and, therefore, by definition lack sufficient market power to charge unjust and unreasonable rates. . . ." The mere examination of this issue indicates otherwise, as does the ability of these companies to maintain excessively high rates.

2. The rates in the CompTel proposal admittedly provide for significant subsidies to the aggregators⁹, many on the order of 50 percent or more;¹⁰
3. The cost of OSP services, without subsidies to aggregators, would be covered by rates charged by the major interexchange carriers;¹¹
4. Rate ceilings set so as to eliminate a majority of Commission complaints are arbitrary and represent nothing in terms of consumer expectations;¹²
5. Rate ceilings, as proposed by CompTel would likely result in the "ratcheting" of rates for all providers up to the ceiling;¹³
6. The proposed rate ceilings are designed in such a manner that industry rate structures would conform to the CompTel structure;¹⁴ and

⁹ See Sprint Comments at p. 3, MCI Comments at p. 5; Southwestern Bell Comments at p. 9. "(T)he aggregator exercises a great degree of control over the OSP's costs and, in turn, the rates that will be charged from the telephone in question." ONCOR Comments at p. 6.

¹⁰ See ONCOR Comments at p. 9. "(F)or some aggregators the first concern (compensation) has taken precedence over the second concern (reasonable service), and the aggregator has engaged in a commission bidding contest intended to exact the maximum possible commission amount." ONCOR Comments at p. 6.

¹¹ The Colorado PUC staff has examined actual cost studies for provision of operator services by some of the providers operating in Colorado. Without divulging company proprietary information, we can make two conclusions. First, the current intrastate rates for tier one operator service providers comfortably exceed the cost of providing those services. Since intrastate rates are, in most cases, the same as interstate rates for interexchange carriers, the same conclusion would likely be true for interstate services. Second, the actual costs of providing operator services (without inclusion of aggregator commissions and pass-through surcharges) for the smaller OSPs could be recovered by rates that are competitive to the tier one rates. The assertions made by Teltrust regarding subsidies in its comments at page 6 are unsubstantiated and without merit.

¹² Research from complaints received by the Colorado PUC during the past two years indicates that approximately 30% of the calls noted in complaints are calls whose rates are below the CompTel proposed rate ceiling. Also see Sprint Comments at p. 2, Southwestern Bell Comments at p. i, and Ameritech Comments at p. 2.

¹³ See Comments of U.S. Osiris at p. 9, Comments of Attorneys General at p. 3.

¹⁴ See Sprint Comments at p. 7, Gateway Comments at p. 5, Pacific Companies Comments at p. 2, NTCA Comments at p. 3, Ameritech Comments at p. 2.

7. Price ceilings represent a mechanism for tacit rate collusion and rate increases.¹⁵

IV. The Ameritech Proposal

We continue to believe that BPP is not the most cost-effective solution to the problem, even in the long term. However, Ameritech has presented a plan that, in many respects, provides a similar solution as that proposed by the Colorado PUC staff. The Ameritech alternative proposal contains the following points:

1. It contains an annually adjusted price ceiling established by the Commission. Ameritech recommends a ceiling set at 120% of the highest of AT&T's, MCI's, or Sprint's rates for each call type, time of day, and mileage band.
2. It allows all OSP rates that are at or below that ceiling to be presumed just and reasonable. Rates above that ceiling would have to be fully cost-justified.
3. Any rates approved by the Commission above the ceiling would be required to provide the disclosure suggested by the Attorneys General.

We believe that the Ameritech proposal to be similar to our proposal. We continue to believe that rate ceilings even presumably "only" 20 percent above the tier one carrier rates are too high and that our proposed "market price" approach is more appropriate. Additionally, we would suggest that the disclosure recommended by Ameritech be enhanced to include the actual price for the call. With these two modifications, the Ameritech alternative proposal is acceptable.

V. Conclusion

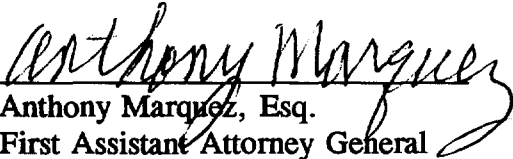
We recommend that the Commission propose a rule that would require price disclosure for any operator handled calls where the rate for that call will exceed the rates determined by the Commission as an appropriate market rate for the industry. We further recommend that the market rate be determined by the method described in our original comments at ¶ 16. Finally,

¹⁵ See Gateway Comments at p.9.

we recommend that the Commission also require that the billing be made in such a way that the aggregator is the responsible party on the customer's bill.

Dated at Denver, Colorado this 25 th day of April, 1995.

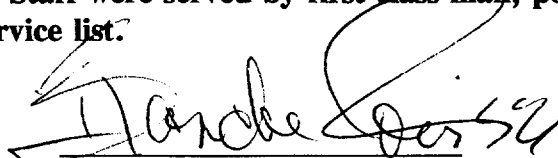
Respectfully submitted,


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Certificate of Service

I hereby certify that, on this 25th day of April, 1995, the foregoing Reply Comments of the Colorado Public Utilities Commission Staff were served by first-class mail, postage prepaid upon the parties on the attached service list.



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